

## **Brief summary of Private Citizen, Inc.**

### **Determining a Level of Scrutiny**

A challenge to state election law requires a court to “weigh the character and magnitude of the asserted injury to the [plaintiff’s] rights protected by the First and Fourteenth Amendments” against the “precise interests put forward by the State as justification for the burden imposed by its rule.” When “rights are subjected to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance.” By contrast, when rights are not subjected to a severe restriction (or a severe burden) from a particular regulation, the regulation must only be deemed as an important state interest or as reasonably important to be justified. Thus, correctly identifying the magnitude of the First Amendment injury is paramount when determining whether a particular regulation should stand.

The character and nature of the injury determine the scrutiny applied to the regulation at issue. There is a balancing test between the injury to a party and the level of interest a state has in a particular regulation. If the burden is high or severe, then the state must show a high or compelling interest for legislation to stand. If the burden is minimal, then the state must only show a reasonable interest in passing the legislation. Because the Tenth Circuit wrongly found the Republican Party to have suffered only a minimal burden, SB54 only needed to be reasonably related to the state’s interest in passing it. A reasonable interest is an easy standard for the state to meet, and the Tenth Circuit therefore incorrectly allowed SB54 to stand. The Tenth Circuit should have found that the party suffered a severe burden, and then the state would have had to show a compelling interest in passing SB54 – a difficult standard for the state to meet.

### **Individual and Organizational Rights**

It is beyond dispute that an expressive association has First amendment rights as an institution and that those rights are not merely vested in its individual members or

even a majority of its members. These rights of expressive associations are independent of their members. Because an expressive association is vested with First Amendment rights as an institution, the nature of injuries the association can suffer differ from those suffered by its individual members.

The Utah Republican party is an expressive association, and it therefore enjoys First Amendment protections as an institution independent of its individual members' rights. **The Tenth Circuit failed to acknowledge the independent rights of the Utah Republican Party, and therefore did not correctly identify the injury SB54 caused the party to suffer.** The Tenth Circuit found that the harm suffered by the party should be measured only by the degree to which SB54 diverged from the predicted desires of a majority of the party's individual members – the injury to the party itself was wholly disregarded. **When the Tenth Circuit failed to acknowledge the institutional rights of the Utah Republican Party, it likewise failed to adequately identify the character and magnitude of the injury at issue. In other words, because the Tenth Circuit's focus was only on the burdens of the party's individual members, the court incorrectly found that the injury suffered by the party was minimal.** The Tenth Circuit's focus should have been on the burdens suffered by the institution itself, where the court would have found a severe injury to the Utah Republican Party's First Amendment rights.

### **Injury Caused**

Left unchecked, the Tenth Circuit's new standard in determining the magnitude of injury suffered by an association, will adversely affect countless expressive associations by foreclosing consideration of their institutional rights—and even perhaps their standing—under the First Amendment. The Tenth Circuit's characterization of the First Amendment as protecting only the sum of individual preferences of members will affect advocacy groups of all viewpoints and structures: membership corporations, unions and associations.

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Private Citizen is a public benefit corporation established in 2015 for the purpose of advancing civil rights and First amendment issues. Private Citizen defends the civil rights of individuals and groups through public education and litigation. It supports challenges to unjust and unconstitutional laws, regulations, and enforcement, often in areas involving political speech and expression.